

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Brick S. Houston,

4 Plaintiff

Case No. 2:18-cv-01652-GMN-PAL

ORDER

5 v.

6 James Dzurenda et al.,

7 Defendants
8
9

10 This action is a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by a state
11 prisoner. On September 13, 2018, this Court issued an order denying the application to
12 proceed *in forma pauperis*, without prejudice, because the application was incomplete.
13 (ECF No. 3 at 1-2). The Court ordered Plaintiff to file a fully complete application to
14 proceed *in forma pauperis* or pay the full filing fee of \$400.00 within thirty days from the
15 date of that order. (*Id.* at 2). The thirty-day period has now expired, and Plaintiff has not
16 filed another application to proceed *in forma pauperis*, paid the full filing fee, or otherwise
17 responded to the Court's order.

18 District courts have the inherent power to control their dockets and “[i]n the
19 exercise of that power, they may impose sanctions including, where appropriate . . .
20 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831
21 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure
22 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
23 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance
24 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
25 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
26 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
27 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
28 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*

1 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
2 failure to comply with local rules).


3 In determining whether to dismiss an action for lack of prosecution, failure to obey
4 a court order, or failure to comply with local rules, the court must consider several factors:
5 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
7 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
8 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
9 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

10 Here, the Court finds that the first two factors, the public's interest in expeditiously
11 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
12 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
13 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
14 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
15 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy favoring
16 disposition of cases on their merits – is greatly outweighed by the factors in favor of
17 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
18 the court's order will result in dismissal satisfies the "consideration of alternatives"
19 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
20 F.2d at 1424. The Court's order requiring Plaintiff to file another application to proceed
21 *in forma pauperis* or pay the full filing fee within thirty days expressly stated: "IT IS
22 FURTHER ORDERED that if Plaintiff does not timely comply with this order, dismissal of
23 this action may result." (ECF No. 3 at 2). Thus, Plaintiff had adequate warning that
24 dismissal would result from his noncompliance with the Court's order to file another
25 application to proceed *in forma pauperis* or pay the full filing fee within thirty days.

26 It is therefore ordered that this action is dismissed without prejudice based on
27 Plaintiff's failure to file another application to proceed *in forma pauperis* or pay the full
28 filing fee in compliance with this Court's September 13, 2018, order.

It is further ordered that the Clerk of Court will close the case and enter judgment accordingly.

DATED THIS 22 day of October 2018.


Gloria M. Navarro, Chief Judge
United States District Court